Armed Robbery in Nineteenth Century Queensland — The Wells Case

by
Ross Barber, M.A., LL.B. [Hons.]*

During the early years of the Colony's independence from New South Wales, Queensland was little troubled by bushranging of any sort. In the Rockhampton area, horse-stealers such as Hartigan, Fagan, Hunter, and the Snob [1] were active, but the first major armed hold-up did not take place until 1864, when a mail coach on the Darling Downs was robbed [2]. New South Wales and Victoria experienced an epidemic of armed robbery, in the 'fifties and early 'sixties, associated with the growth of gold mining. Indeed, the extent of the outbreak in New South Wales was such as to cause Herbert's ministry to include in the Larceny Bill it introduced into the Queensland Parliament in 1865 the following provision as section forty-four :

> Whosoever shall being armed with any kind of loaded arms rob or assault with intent to rob any person and at any time of or immediately before or immediately after such robbery or assault shall by discharging the said loaded arms wound any person shall be guilty of a felony and being convicted thereof shall suffer death as a felon.

It was fully acknowledged by the Government that the provision was not strictly necessary in Queensland at the time, but it was considered advantageous to pass the legislation, in case it should later become necessary 'to meet the conditions which have arisen in the other colonies and which New South Wales has not yet been able to cope with' [3]. 'It becomes us', said Attorney-General Ratcliffe Pring, 'to provide for every conceivable evil and to provide a remedy for it, as far as we can, and not leave it to be amended by and by when the evil arises' [4].

In the Legislative Council, the second reading of the Larceny Bill was moved by John Bramston. In view of the decision subsequently given by the Full Court in the Wells Case in 1880 on the meaning of section forty-four [5], and, in particular, the line of reasoning used by Judge Lutwyche, it seems worthwhile to quote at some length from Bramston's second reading speech :

> . . . But the extreme penalty of the law is not to be inflicted in every case of bushranging. We would inflict capital punishment only in cases where a man armed with loaded firearms discharges those firearms and wounds a person *whom he robs or attempts to rob* (italics added). . . . Seeing the lawlessness and the injury to life and property that have distracted New South Wales, the Government have felt that they could not, in justice to the people of this colony, mitigate the punishment for bushranging. . . . If one of those persons, in sticking up a party, shall discharge firearms and wound *him*, (italics added) he will be liable to suffer death; and if he fires a pistol without wounding or uses any other offensive weapon, he will be subject to imprisonment for life and be subject to a sound flogging also' [6].

Although Theophilus Pugh, a former editor of the *Brisbane Courier* and an opponent of capital punishment, William Brookes, and George Edmonstone (of whom more will be heard later) were all members of the Queensland Parliament in 1865, this extension of capital punishment went unchallenged in the Legislative Assembly, and only Richard Smith spoke against it in the Legislative Council. No specific comment was made in the press either by way of letters from readers or editorials, although the *Brisbane Courier* [7] favoured an increase in the severity of punishment generally. The Larceny Bill had been one of the six Bills for the consolidation of criminal law in Queensland introduced by the Attorney-General that year. Chief Justice Cockle assisted in their drafting. It would seem, then, that most elements within the Colony approved of, or acquiesced in, this extension of capital punishment to a 'property' offence even though, in 1860, the Queensland Parliament had been the first of the Australian colonial parliaments to consider (but reject) a bill seeking to have rape removed from the list of capital offences [8]. This extension of capital punishment to armed robbery with wounding is even more exceptional when it is remembered that the six bills on the consolidation of the criminal law between them saw the end of, as capital offences in Queensland, unlawful carnal knowledge of a girl under ten years of age, bestiality, sodomy, arson of an occupied dwelling house, administering poison with intent to kill, and wounding with intent to kill.

* Lecturer in Law, University of Queensland.

SECTION 44 IN OPERATION

In December, 1869, William Brown (alias Bertram), aged twenty, of German parents, robbed a hotel near Charleville. After firing two warning shots, he wounded the owner, who had tried to prevent him escaping. He was tried in Toowoomba in July, 1870, and sentenced to death under section forty-four of the *Larceny Act*. The Executive Council set Monday, 29 August, 1870 as the date for his execution in Toowoomba jail. Judging from the brief reports of happenings in Toowoomba, which appeared almost daily in the *Brisbane Courier*, there appeared to be no adverse reaction in Toowoomba to the Executive Council's decision when the execution date was set.

However, on the Thursday prior to the appointed day of execution, a letter from 'Justice' appeared in the *Brisbane Courier* [9], calling attention to Brown's impending fate, and urging, in view of his youth, his ignorance and his previous good conduct, and of the fact that no life had been taken, that the *Brisbane Courier* and the public should ask the Executive Council to extend the prerogative of mercy to him. That same Thursday, a deputation consisting of Hon. John Christian Heussler (M.L.C.), [10] Henry Jordan (M.L.A.), [11] George Edmonstone (M.L.A.), and Messrs. Filby and Pint waited on Colonial Secretary Palmer with 'an influentially signed memorial addressed to the Governor', [12] praying for a commutation of Brown's sentence. Arguments identical to those of 'Justice' were urged by the deputationists :

> The Colonial Secretary replied that the deputation was misinformed as to the facts of the case, that the prisoner was a notorious offender, that he was in the "hue and cry" of New South Wales, and that both the Executive Council and the Judge felt that if the law did not take its course in this case, it would in the future be inoperative. He stated emphatically that no petitions or efforts would save him from the extreme penalty of the law [13].

Two further letters appeared in the *Brisbane Courier* [14], another from 'Justice' (who, since his letter attacked statements of Palmer's only reported in the *Brisbane Courier* the same day as the letter appeared, was certainly either a member of the deputation or closely connected with it) and one from T. Pellatt of Moggill Creek. Both urged a commutation of sentence, since, 'as no life was taken, the prisoner's life should be spared' [15], while 'Justice' attempted to make political capital of the issue by claiming that 'Pring's Act making this a capital offence [was passed] in a spurious state of excitement'. He further argued that the decision to hang Brown was 'an anomaly that no person can understand' [16].

The government, the *Brisbane Courier*, and the general public, however, remained unmoved by the small group's urgings, and, on the appointed Monday morning, Brown was hanged. The entire matter apparently passed without much notice being paid to it by anyone apart from the few already mentioned. Certainly Dr. Izod O'Doherty, who was campaigning at the time for the forthcoming election for the seat of Brisbane in the Legislative Assembly, would seem to have remained oblivious to it, as can be gathered from comments by him in 1880 that, up until then, no one had been executed in Queensland for armed robbery with wounding.

A Change in the Attitude of Town Dwellers

The 1870s saw a further decline in the never particularly serious frequency of armed robbery in the Colony and with it the hitherto rather severe application of prison sentences for such crimes was relaxed. In 1875, by virtue of public petitions, together with the good conduct and failing health of the convicts themselves, two armed mail robbers had their sentences of 18 and 17 years shortened by some 11½ and 13 years respectively [17]. In the same year, two men serving 20-year prison terms for highway robbery were released after completing only 9¼ years of their sentences [18].

By 1880, however, there had been a revival of bushranging in the southern colonies where the Kelly Gang was at large, and Johnny Campbell, 'the Black Bushranger', had the Nambour-Gympie District in a state of alarm. [He was said to have killed a black-tracker who had been trailing him, and was finally captured and turned over to the police by fellow Aborigines. He was executed, not for murder but for rape, on 16 August 1880]. It was during this period that Joseph Wells was tried in Toowoomba on 16 February 1880, before Chief Justice Lilley on a charge of robbery under arms with wounding, committed at a bank in Cunnamulla.

The facts of the case appeared to be that Wells had successfully held up at gunpoint and robbed a bank at Cunnamulla and was on the point of making good his escape when the storekeeper from the shop adjoining the bank arrived on the scene, having heard suspicious noises emanating from the bank. With the money in one hand and his gun in the other, Wells jumped on to the counter of the bank and told the store-keeper to 'keep back'. But instead, the man came towards Wells and grappled with him for possession of the gun. It was during this struggle that the gun was discharged and the store-keeper was wounded in the shoulder. Wells then rushed out on to the street. He was pursued out of the town by Sergeant Luke Byrne of the Cunnamulla police. The Sergeant, in evidence at Wells' trial, described how he had approached Wells while the latter was climbing a tree in an attempt to hide. Wells refused to throw down his revolver and said he would not be taken alive. As the Sergeant came closer, Wells said :

> . . . I would rather be shot, I have stuck up the Bank a short time ago and I believe shot a man dead, I may as well be shot now as to spend my lifetime in gaol!

The Sergeant told Wells to throw down his revolver, or be shot dead. Wells continued to threaten the Sergeant with his revolver, came down from his perch in the tree and tried to reach a horse tethered nearby. The Sergeant then seized him and placed him under arrest.

At his trial, Wells was unrepresented by counsel, and, thus, had no effective opportunity of having evidence placed before the jury to support his defence that the gun had been fired accidentally. Furthermore, since he was unaware of the fact that the crime for which he was being tried was a capital offence, he had pleaded guilty to the charge laid against him. On the Judge's advice, his plea was changed to 'not guilty', by reason of his claim that the gun had gone off accidentally, but much of the damage had by then been done. Lilley, C. J., in 'as clear and impartial a summing up as was ever delivered from a Bench' [19], impressed upon the jury that, in order to find Wells guilty, they must be convinced that the firing had not been accidental. But, with no evidence being adduced tending to show this, the jury had little difficulty in returning a verdict of 'guilty'. Wells was sentenced to death and it was determined by the Executive Council that the execution should take place on 15 March 1880.

This decision caused a great deal of public discontent in Toowoomba, Brisbane, and, to a lesser degree, Ipswich. The Toowoomba agitation was led by the *Toowoomba Chronicle*, owned by William Groom, M.L.A., who represented Drayton and Toowoomba in the Legislative Assembly from 1862 to 1901. It would appear, from the reports appearing in the *Brisbane Courier*, that a large proportion of the population of Toowoomba was active in the campaign. A petition by Toowoomba residents praying for a commutation of the sentence was sent to the Governor. Ipswich would seem to have been less involved on Wells' behalf, but George Thorn, M.L.A., the Member for Ipswich, and solicitor Charles F. Chubb, described by Johnston as being 'exceptional as a leader in community life' [20] and as having 'spent a lifetime contributing to the civic life of the community' [21], both took part in the Brisbane campaign.

In Brisbane, the leading advocates of commutation were Dr. Izod O'Doherty, M.L.C., who had been present at the trial, and William Brookes, who at the time was out of parliament, but who had been in the Legislative Assembly from 1864 to 1867, and who was to return in 1882. The agitation in Brisbane lasted just two weeks, but, during this time, two deputations awaited on Governor Kennedy and one on Attorney-General Pring, who granted a week's postponement of the execution to facilitate Wells'

appeal to the Full Court against his conviction. A public meeting, attended by some 150 persons, was held in the Chamber of Commerce Rooms, an appeal was taken before the Full Supreme Court, and, finally, a deputation awaited on Acting-Governor Joshua P. Bell, almost on the eve of the execution. In addition, Brookes wrote letters to *The Telegraph* and a petition was circulated in Brisbane and was 'numerously signed' [22].

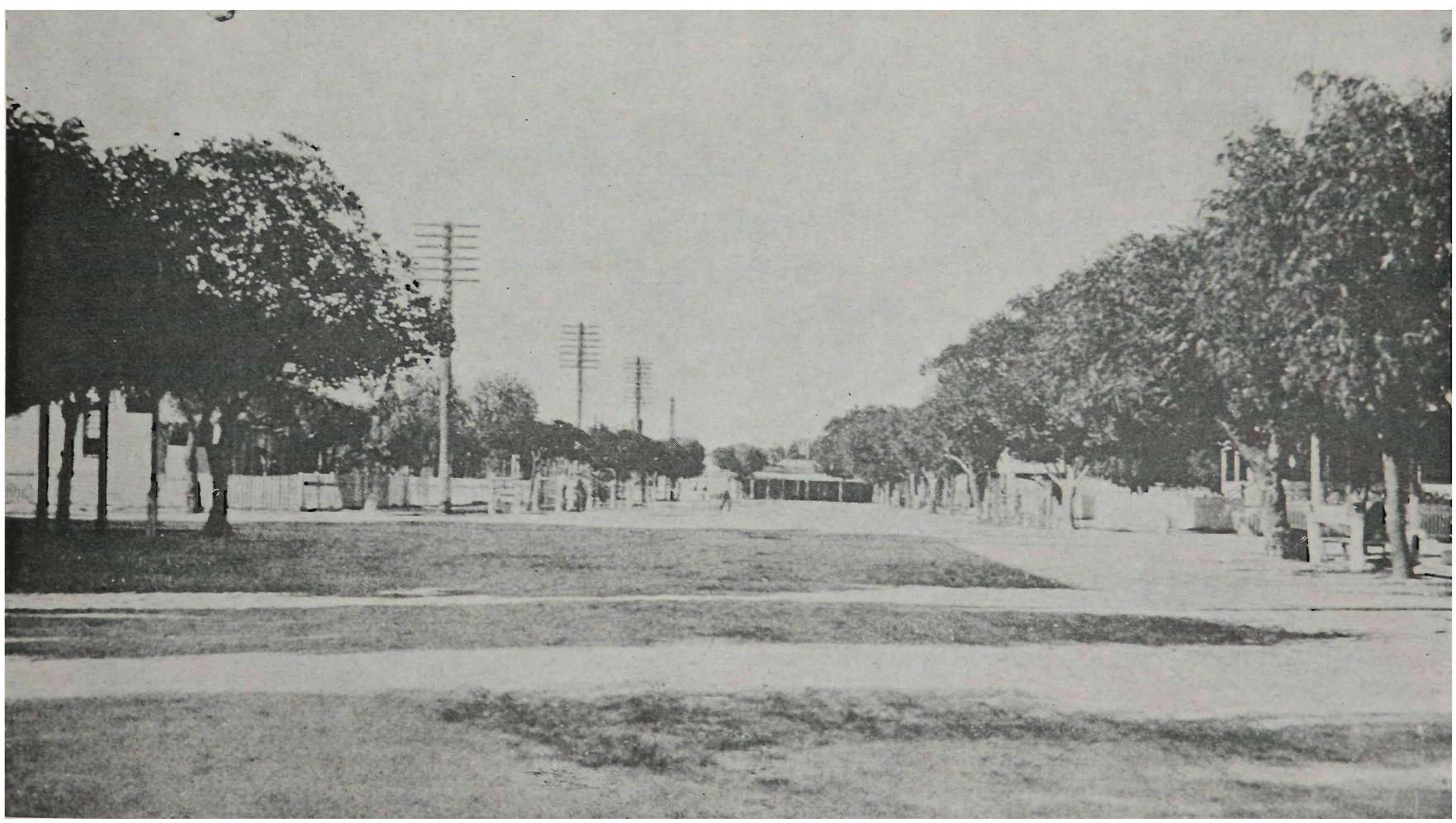
In all, seven parliamentarians [23], not including Thomas Murray-Prior, Brookes and Thomas Fitzgerald and eight legal men [24], played an active and public role in the agitation, as did the journalists Mellifont and William Coote. A small number of business men also were involved. But the churches remained aloof from the matter, as did the Mayor, who refused to act as chairman at the public meeting. Both the *Brisbane Courier* and *The Telegraph* withheld their support, with *The Telegraph* being quite severe in its condemnation of the efforts of those seeking a commutation of the death sentence. It issued two hostile editorials and published four letters. Two opposed commutation and were unsigned, two, one from Brookes and one from a T. Jones of the Valley, urged commutation. On the other hand, the *Brisbane Courier* was content merely to report on the various stages of the agitation, and refrained from editorial comment until after the appeal to the Full Court had been dismissed. It then seemed torn between attacking Pring (who had been the subject of several previous unfavourable editorials) for granting a stay of execution for what, it claimed, was an obviously baseless appeal, and supporting the previous decision to carry out the execution :

> Up to last week there was no doubt as to what the fate of the convict ought to be . . . But owing to the blame worthy weakness of the Attorney-General a quite unnecessary difficulty has arisen . . . By his action (in granting the reprieve) he has laid a painful duty on his colleagues. The unhappy man lying under sentence has tasted the sweetness of hope . . . if he dies now he dies a double death. The reasons for completing his sentence last Monday remain unaltered, and yet humanity shrinks from the idea of snatching a man from death for a few days, and then consigning him to the gallows . . . Whatever the decision (the Government) may now arrive at . . . the great majority of the thinking public will understand their difficulty and endorse their action [25].

The chief argument advanced on behalf of Wells by barristers Garrick, Chubb, and Rutledge at the Full Court hearing was that section forty-four of the *Larceny Act of 1865* only applied where the person wounded by the discharge of the loaded firearm was the same person who had been robbed by the armed offender [26]. Reference to the statements made by John Bramston, M.L.C., on behalf of the Government in 1865, will confirm that this was twice stated by him to be the intended scope of section forty-four. In Wells' case, the person wounded had not been the person actually robbed. However, it is and was, even in 1880, a well established rule of legal interpretation that a court will not attempt to interpret a piece of legislation by reference to anything said in parliament at the time of the passing of the particular piece of legislation. The Full Court's only task, then, was to see if the meanings of the section as it stood was clear and unambiguous. If it was, then its duty was to give legal effect to that clear and unambiguous meaning.

Thus, the case turned around the meaning of the word 'any' in the phrase 'wounds any person'. It was the Full Court's unanimous decision that the word 'any' in this context meant, in fact, 'any person' and not 'any person robbed' as was submitted on Wells' behalf. The decision was quite correct and completely incontrovertible. But the following passage from the judgement of Judge Lutwyche, who delivered the leading judgement in the case, strikingly shows how artificial the results of applying legal reasoning in order to determine parliament's 'intention' can be.

> It is an elementary rule, and one consistently enforced by the Courts in giving their opinion on the meaning of statutes, that where the grammatical meaning is plain and

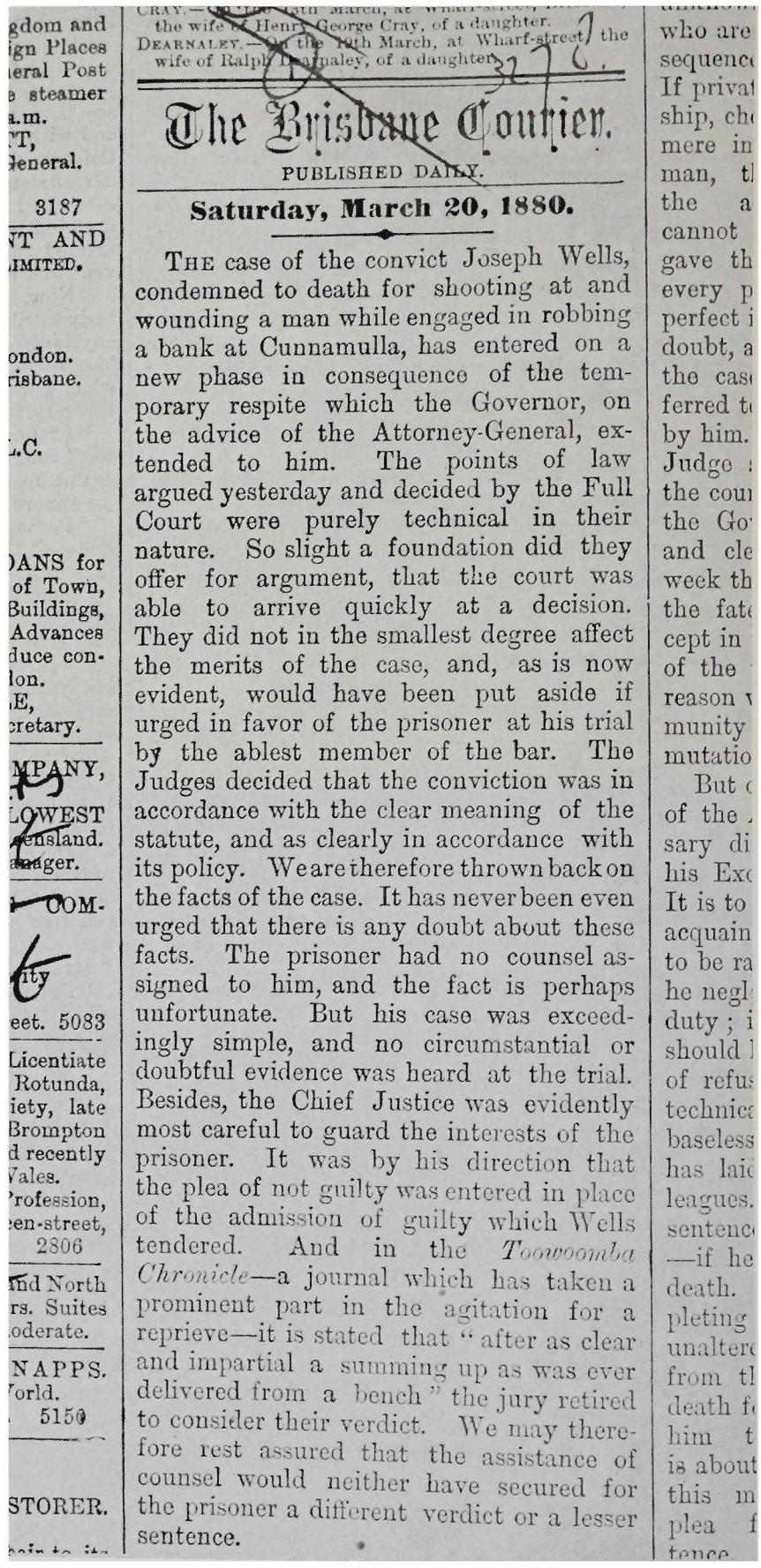


Cunnamulla.

clear that should be followed, unless some manifest inconvenience, absurdity, or injustice would result. Looking at the terms of s. 44 it seems to me that the words are exceedingly plain and clear. I consider that the first ingredient in the offence, which was provided for in that section, and which, I believe, was created by it, refers to the intent with which the robbery was committed, and that the whole of it refers to an offence compounded of robbery and wounding, the latter of which might be either before or after the robbery. The contention of the counsel who have addressed the Court on behalf of the prisoner was the word "any", in the latter part of the section, must mean "the same". They might, of course. They might be confined to the same person who was robbed and wounded; but, as was admitted by one of the counsel, the word "any" might embrace a different person from the one who was either robbed or wounded; and it appears to me that is really the meaning we are to put upon that part of the statute. I see no manifest inconvenience, absurdity, or injustice likely to follow from our coming to such a conclusion. On the contrary, I think there would be a manifest inconvenience, a manifest absurdity, and a manifest injustice from holding the reverse opinion. A case I put in course of the argument appears to me in a simple way to point out the policy of the Legislature and to assist in explaining the meaning of the words which are used in s. 44. Supposing an aged and feeble man on a journey, and accompanied by another whom he had taken with him for his assistance, were considered by an evil disposed person to be a desirable person to rob, and the latter were, in order to effect his purpose, to wound the strong man and immediately afterwards rob the other, it seems to me that the Legislature has very prudently provided for occurrences of that kind, and has provided for it in no other part of the statute. If the word "any" did not embrace the person who was robbed as well as his companion who was wounded, very great evils might result. The Legislature has chosen that the punishment for these two offences together shall be much more severe than they considered necessary where the robbery and wounding are separate, and it seems to me that in passing the Act they proceeded with care, circumspection, and astuteness, when they made this section refer to more than one case [27].

While this 'intention' imputed to the 1865 Queensland Parliament which enacted the *Larceny Act* is a quite intelligent one, and one which a parliament might well have had, if one looks again at the statements at the relevant time of the members who spoke on the Larceny Bill, it will be readily seen that, far from it being the intention to legislate in the manner in which the Full Court decided, the fact situation of a case like Wells' would not seem to have been present in their minds at all. At best one could say that it may have been the intention of Chief Justice Cockle, the draftsman, that such a situation should fall within the scope of section forty-four. Hence, his use of the word 'any' instead of 'that', which would clearly have referred back to the person robbed. Immediately following the Full Court's decision on 19 March, the Government met and decided that the postponed execution should take place on 22 March 1880.

Acting-Governor Bell, although saying that nothing would be more in accord with his own personal feelings [28], declined to interfere, having regard to the opinions of Governor Kennedy, the Government, and the trial judge (Lilley, C. J.) that there were no reasons for extending to Wells the prerogative of mercy. The concern of many of the commutationists, particularly the members of the legal profession, stemmed from Wells' not having had the benefit of a defence counsel when on trial for his life. The practice at the time was for the Government to set aside a sum of money to pay for the defence of Aborigines and Kanakas (in capital and other serious cases), but not for poor whites. Arthur Rutledge, M.L.A., based his protest against the execution solely on these



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CRAY.—[illegible] March, at Wharf-street, the wife of Henry George Cray, of a daughter.
DEARNALEY.—On the 19th March, at Wharf-street, the wife of Ralph Dearnaley, of a daughter.

The Brisbane Courier.

PUBLISHED DAILY.

Saturday, March 20, 1880.

THE case of the convict Joseph Wells, condemned to death for shooting at and wounding a man while engaged in robbing a bank at Cunnamulla, has entered on a new phase in consequence of the temporary respite which the Governor, on the advice of the Attorney-General, extended to him. The points of law argued yesterday and decided by the Full Court were purely technical in their nature. So slight a foundation did they offer for argument, that the court was able to arrive quickly at a decision. They did not in the smallest degree affect the merits of the case, and, as is now evident, would have been put aside if urged in favor of the prisoner at his trial by the ablest member of the bar. The Judges decided that the conviction was in accordance with the clear meaning of the statute, and as clearly in accordance with its policy. We are therefore thrown back on the facts of the case. It has never been even urged that there is any doubt about these facts. The prisoner had no counsel assigned to him, and the fact is perhaps unfortunate. But his case was exceedingly simple, and no circumstantial or doubtful evidence was heard at the trial. Besides, the Chief Justice was evidently most careful to guard the interests of the prisoner. It was by his direction that the plea of not guilty was entered in place of the admission of guilty which Wells tendered. And in the *Toowoomba Chronicle*—a journal which has taken a prominent part in the agitation for a reprieve—it is stated that "after as clear and impartial a summing up as was ever delivered from a bench" the jury retired to consider their verdict. We may therefore rest assured that the assistance of counsel would neither have secured for the prisoner a different verdict or a lesser sentence.

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grounds, and his speech at a public meeting on Saturday, 13 March, was not without political overtones :

> He had no sympathy with maudlin sentimentality that considered it to be its duty to get up an agitation every time a criminal was sentenced to death. (But) a blackfellow, even when his offence was no worse than a serious assault, was always provided with counsel by the Government. There was no excuse for the Government, they went to the expense of employing able counsel for the prosecution and yet left the criminal destitute of the assistance they would furnish a common blackfellow [29].

Brookes later promised that 'when Parliament met steps would be taken to prevent any man being tried for his life without being defended' [30]. But neither Brookes nor Rutledge made any real moves in this matter, though they remained in Parliament (although not continuously) until 1898 and 1904, respectively. Rutledge was Attorney-General from 1883 to 1888 and from 1899 to 1903. Two members of the deputation (Chubb and Swanwick) were more personally involved than most, for, apart from their general interest in civic matters and seeming injustices, they had been present in court when Wells was tried and had been approached by Dr. O'Doherty, who, being appalled at Wells not being defended, had unsuccessfully solicited their assistance on his behalf. They had refused, since, to have voluntarily offered their services would, they claimed, have been contrary to legal ethics.

Few were prepared publicly to advocate the abolition of the death penalty for robbery under arms with wounding, but the general consensus of opinion of the citizens of Brisbane and Toowoomba would appear to have favoured such action. The Government and the two Brisbane daily newspapers, however, refused to accept such an argument. The *Brisbane Courier* put its view on the matter thus :

> Dwellers in a town like Brisbane or Toowoomba are not fair judges of this matter. They are in no danger from bushranging by armed men prepared to carry out their nefarious designs even at the cost of murder. They have always policemen within hail; the very thickness of population around them is a sufficient safeguard. Not so in the bush where crimes of the kind that Wells committed are comparatively easy (to commit) . . . The very peacefulness of the general population renders them more liable to fall victims of the daring of a determined ruffian. They live in peace, resting safely under the protection of the law, which terrifies intending evildoers by the severity of the punishment it decrees against them. Tender-hearted men, shrinking from the infliction of the death penalty, may permit their emotions to over master their judgment. They forget this one life which hangs in the balance is weighed against the security of the whole community and the fate of the unknown number of evil-disposed men who are only retained by their fear of the consequences from imitating Wells' crime. For such an action as this, the intentional shooting of a man during the commission of a robbery, the law decrees death. And rightly so. Of all violent crimes, this of armed brigandage is the one the sparsely settled districts are most liable to . . . We are convinced the Government will not be influenced by the local clamor, or confound it with any general expression of feeling by the community at large [31].

The Telegraph's comment was on similar lines :

> Legal punishment to be effective must be certain and unalterable . . . by the outside public. The criminal should know that the punishment provided for the infraction of the law which he has violated is as certain and inexorable as fate. The chief aim of punishment is to deter others. . . . Life and property must be protected and made secure. This is a fundamental of civilized life [32].

One of their correspondents went even further, stating that :

> Wells has been found guilty of one of the foulest deeds that can be committed in any civilized country. Depend upon it, the only way in a sparsely populated country like Queensland to save the ruthless transfer of our hard earnings into the pockets of lazy scamps and murderers, is to allow the law to take its course and make short work of them, and thereby rid society of this foul excrescence [33].

In the face of this opposition, Dr. O'Doherty, who had been one of the few publicly to express his disapproval of Wells' crime being a capital one, turned a complete somersault and told the Acting-Governor that 'he believed that no punishment was too severe for the crime for which Wells was convicted' [34], but that, since he had not been defended at his trial, he ought not to be hanged. Earlier, he had stated publicly that 'the Statute under which Wells was convicted was badly worded and a disgrace to the Statute Books, and that he promised to bring in an Act to repeal it on the first day of Parliament' [35]. Needless to say, he took no such action. Only Paddy O'Sullivan, M.L.A., was consistent in his opposition to this crime being a capital one, and he alone of the deputation that waited on Bell made any real impression on the Acting-Governor [36]. O'Sullivan claimed that 'it was better to err on the side of mercy, and that a long term of imprisonment was as great, if not a greater, deterrent as death' [37]. At the time of Mütter's execution in 1879, he had expressed the hope that capital punishment might eventually be done away with completely [38].

The campaign closed, then, with the Government, the Brisbane press, and country people apparently still firmly convinced of the necessity for the retention of robbery under arms with wounding as a capital offence, because of its alleged deterrent effect. However, a contrary view would seem to have been aroused in the minds of many Toowoomba and Brisbane residents. Rutledge, too, despite his public statement to the contrary, would seem to have been deeply affected by Wells' execution, for he had joined with Garrick and Chubb in taking the appeal to the Full Court. As the Attorney-General in the Dickson Government, it was Rutledge who, in 1899, introduced the *Criminal Code Bill* under which this offence ceased to be punishable by death.

Abolition

Although the criminal statistics for the Colony of Queensland cannot be classified as being wholly reliable, it would seem that Wells was the last person convicted of the offence of armed robbery with wounding. Certainly, he was the last person executed for this crime. It came as little surprise, then, when the Royal Commission on the Draft Criminal Code, in June, 1899, reported that it was of the unanimous opinion that 'the death penalty should no longer be inflicted where death of the wounded person does not ensue' [39], the Government accepted this recommendation when it introduced the *Criminal Code Bill* into parliament in September of that year. After reminiscing on the part he had played in the Wells case, Rutledge, when introducing this Bill into the Legislative Assembly, told the House :

> That is the state of the law and an amendment in that respect is greatly to be necessitated. . . . I do not think a law which allows an occurrence of that kind should be perpetuated. A law which would apply to a condition of things when bushranging prevailed should not continue in the present time [40].

When the Criminal Code became operative in 1901, the offence of armed robbery with wounding ceased to be a capital offence in the new State of Queensland.

FOOTNOTES

1. W. R. Johnston. *A study of the relationship between the Laws, the State and the Community in Colonial Queensland.* Unpublished M.A. thesis, University of Queensland, 1965. p. 186.
2. M. O'Sullivan. *Cameos of Crime.* Second edition. Brisbane, Jackson and O'Sullivan, 1947. p. 251.
3. *Brisbane Courier,* 1 July 1865. Second reading speech by Attorney-General.
4. See reference 3.
5. *Queensland Criminal Reports 1860-1907.* p. 112.
6. *Queensland Parliamentary Debates,* v. II, 2 August 1865. p. 396.
7. *Brisbane Courier,* 5 July 1865.
8. R. N. Barber. *Capital punishment in Queensland.* Unpublished B.A. Honours thesis, University of Queensland, 1967. p. 53.
9. *Brisbane Courier,* 25 August 1870.

10. John Christian Heussler (1820-1907) was born in Germany. He was Queensland's Emigration Agent in Europe 1861-62 and Netherlands Consul in Brisbane 1862-1903 and Consul for the German Empire 1880-1897. He was a Member of the Legislative Council from 1866 to 1907.
11. Henry Jordan (1818-90) M.L.A. 1860, 1868-71, 1883-90. In 1860, he had declared himself opposed to capital punishment. See *Brisbane Courier*, 1 September 1860.
12. *Brisbane Courier*, 26 July 1870.
13. *Brisbane Courier*, 26 July 1870.
14. *Brisbane Courier*, 26 July 1870.
15. *Brisbane Courier*, 26 July 1870, letter signed T. Pellatt.
16. *Brisbane Courier*, 26 July 1870, letter signed 'Justice'. The correspondent referred to recent sentences passed on Bowerman (1868) who received life for attempted murder and Herrlich (1870) who received 15 years for murder.
17. *Votes and Proceedings of the Legislative Assembly (Queensland)*, 1875, v. I, p. 505.
18. *Votes and Proceedings*, 1875, v. I, p. 507.
19. *Brisbane Courier*, 20 March 1880. Editorial, quoting *The Toowoomba Chronicle.*
20. Johnston. p. 353.
21. Johnston. p. 351.
22. *Brisbane Courier*, 13 March 1880.
23. Dr. Izod O'Doherty, M.L.C., George Thorn, Arthur Rutledge, Francis Beattie, Frederick Swanwick, Patrick O'Sullivan, and James Garrick, M.L.A.
24. Messrs. Sherridan, Swanwick, Chubb, Rutledge, Bunton, Bruce, Garrick, and Helicar.
25. *Brisbane Courier*, 20 March 1880.
26. Only questions of law were open to argument at this hearing. The issue of whether the firing of the pistol had been accidental or intentional could not be re-canvassed.
27. *Queensland Criminal Reports 1860-1907.* p. 115-6.
28. *Brisbane Courier*, 22 March 1880.
29. *Brisbane Courier*, 15 March 1880. Ratcliffe Pring and Samuel Griffith had appeared for the Crown.
30. *Brisbane Courier*, 23 March 1880.
31. *Brisbane Courier*, 20 March 1880. Only 17.4% of the Colony's population lived in Brisbane in 1881. Refer D. P. Crook. *Aspects of Brisbane Society in the eighteenth century.* Unpublished B.A. Honours thesis, University of Queensland, 1958.
32. *The Telegraph*, 9 March 1880.
33. *The Telegraph*, 10 March 1880. Letter signed 'Subscriber'.
34. *Brisbane Courier*, 22 March 1880.
35. *Brisbane Courier*, 15 March 1880.
36. *Brisbane Courier*, 22 March 1880.
37. *Brisbane Courier*, 22 March 1880.
38. *Q.P.D.*, v. XXIX, 10 June 1879, p. 343.
39. *Votes and Proceedings*, First Session 1899, p. 292.
40. *Q.P.D.*, v. LXXXII, 21 September 1899, p. 112.